

Michele D. Floyd (SBN 163031)
michele@zwillgen.com
ZWILLGEN LAW LLP
425 Market Street, Suite 2220
Telephone: (415) 955-2796
Facsimile: (415) 955-2796

Albert Rudgayzer
305 Broadway
Suite 501
New York, NY 10007
Telephone: (212) 260-5650
Facsimile: (888) 327-1109

Leota Tenant (admitted *pro hac vice*)
leota@zwillgen.com
ZWILLGEN PLLC
1705 N Street, NW
Washington, DC 20036
Telephone: 202-706-5209
Facsimile: 202-706-5298

Plaintiff *Pro Se*

Attorneys for Defendant YAHOO! INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALBERT RUDGAYZER, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

V.

YAHOO! INC.,

Defendant.

Case No. 5:12-cv-01399-EJD

JOINT CASE MANAGEMENT STATEMENT

Honorable Edward J. Davila

Case Management Conference set for August 24, 2012

Pursuant to Local Rule 16-9, and the Standing Order for all Judges of the Northern District of California, Plaintiff Albert Rudgayzer (“Plaintiff”) and Defendant Yahoo!, Inc. (“Defendant” or “Yahoo!”) (collectively, the “Parties”), hereby jointly submit the following Case Management Statement.

JURISDICTION AND SERVICE

Plaintiff alleges that this Court has subject matter jurisdiction over the claims in this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). As more fully set forth in its

1 Motion to Dismiss, Defendant Yahoo! challenges Plaintiff's reliance on 27 U.S.C. § 1332(d) as a
 2 basis for jurisdiction on the ground that Plaintiff cannot represent a class *pro se* and therefore his
 3 class action allegations are faulty on their face and must be dismissed. Absent valid class action
 4 allegations, jurisdiction under CAFA fails.

5 No issues exist with respect to personal jurisdiction or venue, and Defendant has been
 6 properly served.

7 **II. SUBSTANCE OF THE ACTION**

8 In this putative class action, Plaintiff alleges that Yahoo! violated its privacy policy when it
 9 disclosed his full name in the address headers of the emails that Plaintiff sent from his own Yahoo!
 10 Mail account. Plaintiff is acting in *pro se* and purports to represent a class in *pro se*.

11 Yahoo! disputes Plaintiff's standing to bring this suit as he has failed to allege any harm
 12 stemming from the disclosure of his name to the recipients of his emails. Yahoo! further denies that
 13 it has engaged in any conduct that violates its Privacy Policy.

14 **III. FACTUAL ISSUES IN DISPUTE**

15 The factual issues disputed in this case include, but are not limited to:

16 1. Whether Yahoo! users had prior notice that their names would be included in the
 17 headers of the email they send;

18 2. Whether and when users consented to the disclosure of their first and last names to the
 19 recipients of the email that they sent;

20 3. Whether Yahoo!'s Privacy Policy and/or Terms of Service address or restrict the
 21 disclosure of a user's first and last name to recipients of the email that they sent; and

22 4. Whether Plaintiff suffered any harm from the disclosure of his first and last name to
 23 the recipients of his own emails.

24 **IV. LEGAL ISSUES IN DISPUTE**

25 Yahoo! filed a motion to dismiss that sets forth several legal issues, including jurisdiction and
 26 failure to state a claim for breach of contract. In addition to the issues raised in Yahoo!'s motion, the
 27 Parties have identified the following as legal disputes:

28

- 1 1. Whether the inclusion of a user's first and last name in the headers of email constitutes
- 2 a breach of Yahoo!'s Terms of Service;
- 3 2. Whether Plaintiff or the purported class have sustained a cognizable injury from the
- 4 alleged disclosure; and
- 5 3. Whether Plaintiff will be able to certify the class.

6 **V. MOTIONS**

7 Plaintiff anticipates filing the following motions:

- 8 1. A motion for class certification
- 9 2. A motion for summary judgment; and
- 10 3. Discovery related motions, if necessary.

11 Defendant anticipates filing, or has filed, the following motions:

- 12 1. Defendant Yahoo!'s Motion to Dismiss (filed on July 31, 2012 (Dkt. No. 22), fully briefed
- 13 and set for hearing on October 26, 2012 at 9am).
- 14 2. A motion for summary judgment; and
- 15 3. Discovery related motions, if necessary.

16 **VI. AMENDMENT OF PLEADINGS**

17 At this time, Plaintiff does not anticipate the need to amend the Complaint. The Parties

18 proposed that amended pleadings (if any), be filed in accordance with whatever discovery schedule

19 and general case deadlines the Parties ultimately agree to, as discussed in Section XVII below, or as

20 set by the Court if the Parties are unable to agree on a date.

21 **VII. EVIDENCE PRESERVATION**

22 Counsel for both Parties have discussed evidence preservation and have spoken to their clients

23 about the need to preserve relevant evidence, including electronically stored information.

24 **VIII. DISCLOSURES**

25 The Parties intend to exchange their Initial Disclosures on September 7, 2012.

1 **IX. DISCOVERY**

2 To date, no discovery information has been formally exchanged. As stated above, the Parties
 3 intend to make their initial disclosures on September 7, 2012. The Parties further anticipate
 4 commencing discovery after they exchange their initial disclosures.

5 The Parties anticipate taking discovery on the following non-exhaustive list of topics: (1) the
 6 Terms of Service and Privacy Policy agreements displayed to Plaintiff while signing up for Yahoo!'s
 7 services; (2) the process by which Plaintiff purportedly assented to Yahoo!'s Terms of Service; (3)
 8 information about how and when users are asked for their first and last names in association with an
 9 email account; (4) information about how users send their mail and the email headers attached; (5)
 10 information about whether Yahoo! obtained consent; (6) information about users awareness regarding
 11 the contents of their email headers; (7) information regarding the recipients and contents of the email
 12 sent by Plaintiff which allegedly disclosed his first and last name; (8) information regarding emails
 13 sent and received by Plaintiff using services other than Yahoo!.

14 Although it is premature to anticipate the scope of discovery in this case, the Parties do not
 15 foresee the need for a modification of the scope of discovery rules in the Federal Rules of Civil
 16 Procedure, or the standard discovery limitations thereunder.

17 **X. CLASS ACTION**

18 Plaintiff alleges that the Court should certify a class pursuant to Fed. R. Civ. P. 23(b)(3)
 19 defined as follows:

20 Class is all persons and entities located in the United States who, without prior
 21 notice, have had their names disclosed when sending emails from their Yahoo
 22 email addresses, other than Yahoo, its officers, employees, and representatives,
 23 and their families (the "Class"), at any time during the period beginning four
 24 years prior to the commencement of this action and continuing until the
 25 resolution of this action (the "Class Period").

26
 27 Yahoo! disagrees that this action is suitable for class resolution and will oppose any motion
 28 for certification on grounds including but not limited to, the following: (1) common issues of law or

1 fact do not predominate in the trial of this action; (2) different class members may be differently
 2 situated as to their understandings and expectations regarding the use of email, and (3) the class lacks
 3 any representation as Plaintiff cannot represent a class *pro se*.

4 **XI. RELATED CASES**

5 The Parties are unaware of any related cases.

6 **XII. RELIEF REQUESTED**

7 As set forth in the Complaint, Plaintiff seeks injunctive relief, damages, fees and costs.
 8 Plaintiff has not been able to identify any actual damages, but seeks nominal damages, as per
 9 California law.

10 Defendant believes that the failure to identify actual damages precludes Plaintiff's ability to
 11 pursue this case in federal court.

12 **XIII. SETTLEMENT AND ADR**

13 On August 22, 2012, the Parties telephonically met and conferred. Yahoo! is amenable to
 14 mediation if it appears that pursuing alternative dispute resolution would be beneficial after some
 15 initial discovery has taken place. The Parties have not been able to agree on mediation and the
 16 Parties are not amenable to settlement at this time.

17 **XIV. CONSENT TO MAGISTRATE FOR ALL PURPOSES**

18 The Parties have respectfully declined to proceed before a magistrate judge for all purposes. (Dkt.
 19 No. 5).

20 **XV. OTHER REFERENCES**

21 The Parties do not believe that this case is suitable for reference to binding arbitration, a
 22 special master or the Judicial Panel on Multidistrict Litigation.

23 **XVI. EXPEDITED SCHEDULE**

24 The Parties agree that this case is not suitable for an expedited schedule.

25 **XVII. SCHEDULING**

26 The Parties propose the following schedule:

June 25, 2013	Trial
---------------	-------

1	May 25, 2013	Pretrial Conference
2	April 25, 2013	Last Day to Have Dispositive Motions Heard
3	March 25, 2013	Expert Discovery Cut Off
4	February 25, 2013	Discovery Cut Off
5	February 8, 2013	Last Day to Disclose Defendant's Expert Reports
6	January 25, 2013	Last Day to Disclose Plaintiff's Expert Reports
7	14 days following the issuance of an order regarding Yahoo!'s Motion to Dismiss	Last Day to File Class Certification Motion
8		
9		
10	November 9, 2012	Last Day to File Motions to Join Parties or Amend Pleadings

11

12 **XVIII. TRIAL**

13 The Parties have not requested a jury trial.

14 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

15 Yahoo! has filed its certificate of interested entities or persons. (Dkt. No. 6). Yahoo! knows
 16 of no other persons, firms, partnerships, corporations or other entities that have either (i) a financial
 17 interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of
 18 interest that could be substantially affected by the outcome of the proceeding.

19 **XX. OTHER MATTERS**

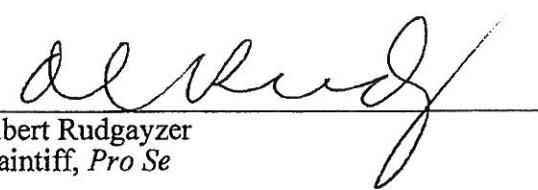
20 The Parties are unaware of any other matters that may facilitate the just, speedy and
 21 inexpensive disposition of this action at this time.

22

23

24 Dated: August 22, 2012

25 By:

26 
 27 Albert Rudgayzer
 28 Plaintiff, *Pro Se*

1
2 ZWILLGEN LAW LLP
3
4
5

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Dated: August 22, 2012

By: /s/ Michele D. Floyd
Michele D. Floyd
Attorneys for Defendant YAHOO! INC.

CERTIFICATE OF SERVICE

I, Sheila Marie, do hereby certify that on August 22, 2012, I sent a copy of the foregoing Joint Case Management Statement to Plaintiff *Pro Se*, via regular U.S. mail, at the following address:

Albert Rudgayzer
305 Broadway
Suite 501
New York, NY 10007

Sheila Marie
Sheila Marie